

Meeting No. 7
April 26, 2004
Hamburg Town Board Meeting
S-6100 South Park Avenue
Hamburg, New York 14075

Supervisor Hoak calls the meeting to order at 7:00 p.m.

Roll Call:	Patrick H. Hoak	Supervisor
	D. Mark Cavalcoli	Councilman
	Kathleen C. Hochul	Councilwoman
	Joan A. Kesner	Councilwoman

Absent:	Thomas Quatroche, Jr.	Councilman
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Also Present:	Catherine Rybczynski	Town Clerk
	Richard Boehm	Deputy Town Attorney
	James Spute	Finance Director
	Joseph Coggins	Police Chief
	Drew Reilly	Planning Consultant
	Richard Lardo	Principle Engineering Assistant
	Tim Regan	Community Development Assistant
	Robert Hutchison	Town Assessor
	John Farrell	Director of Senior Services
	Kurt Allen	Supervising Building Inspector

The Pledge of Allegiance Was recited.

Information on Fire Exits was provided.

Supervisor Hoak presents to Jim Spute, Finance Director, the highest award given in the State for Finance and Accounting for the 22nd consecutive year, the only Town in the State who has done this and also the first Town under GASBE 34 to receive this award. A lot of time and effort went into this and he presents this to Mr. Spute and thanks him and his staff.

7:15 p.m. Public Hearing for the acquisition, through eminent domain, of approximately 0.804 acres of land owned by Donald Spittler, Jr.

Catherine Rybczynski, Town Clerk, reads the following public notice as published in the Hamburg Sun and the Front Page:

LEGAL NOTICE
TOWN OF HAMBURG

PLEASE TAKE NOTICE that pursuant to a Resolution passed by the Town Board on April 5, 2004, a public hearing will be held pursuant to Article 2 of the New York Eminent Domain Procedure Law with regard to a proposal substantially as follows:

PROPOSED EMINENT DOMAIN ACQUISITION

For the acquisition through eminent domain of approximately 0.804 acres of land owned by Donald J. Spittler, Jr., and located at SBL No.: 194.00-3-24.11, Farm Lot 37, Township 9, and Range 8, for the purpose of the remediation of the former Town of Hamburg Landfill in accordance with New York Department of Environmental Conservation mandates, such acquisition being necessary to perform the required actions and for the overall benefit, safety and health of the public, and such property being more particularly bounded and described as follows:

COMMENCING at a point on the southeast line of the New York State Thruway, Map 502, Parcel 509, the said point also being the northeast corner of Donald J. Spittler, Jr. (SBL No. 194.00-3-24.11) and also being the northwest corner of lands owned by the Town of Hamburg (SBL No. 194.00-4-17); thence southerly along the east line of Spittler and west line of the Town of Hamburg, a distance of 65 feet to the point or place of beginning; thence westerly and perpendicular to the east line of Spittler a distance of 45 feet; thence southerly at a right angle, a distance of 150 feet; thence westerly at a right angle, a distance of 15 feet; thence southerly at a right angle, a distance of 295 feet; thence easterly at a right angle, a distance of 15 feet; thence southerly at a right angle, a distance of 235 feet; thence easterly at a right angle, a distance of 45 feet to a point on the east line of Spittler, the said point also being on the west line of the Town of Hamburg; thence northerly along said east line of Spittler, a distance of 680 feet to the point or place of beginning, and containing an area of 0.804 acres.

THEREFORE, pursuant to Article 2 of the EDPL, the Town Board of the Town of Hamburg will hold a public hearing on April 26, 2004 at 7:15 p.m. (local time), at Hamburg Town Hall, 6100 South Park Avenue, Hamburg, New York 14075, at which time all interested persons may be heard.

Dated: April 5, 2004

CATHERINE RYBCZYNSKI
Town Clerk, Town of Hamburg

1 HAMBURG TOWN BOARD MEETING
2 APRIL 26, 2004
3
4 PROPOSED EMINENT DOMAIN ACQUISITION
5
6 PRESENT: PATRICK H. HOAK SUPERVISOR
7 D. MARK CAVALCOLI COUNCILMAN
8 KATHLEEN C. HOCHUL COUNCILWOMAN
9 JOAN A. KESNER COUNCILWOMAN
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11 CATHERINE RYBCZYNSKI TOWN CLERK
12 RICHARD G. BOEHM, ESQ. DEPUTY TOWN ATTORNEY
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14 GREINER & CHADSEY
15 BY: DEBORAH CHADSEY, ESQ.
16 5687 Main Street
17 Williamsville, New York 14221
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19 DONALD H. MICHALAK, ESQ.
20 16 West Main Street
21 Fredonia, New York 14063
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1 P R O C E E D I N G S
2 SUPERVISOR HOAK: Now at 7:15 we have scheduled a
3 Public Hearing for acquisition
4 through eminent domain of property
5 approximately .804 acres of land
6 owned by Donald Spittler, Jr. Cathy
7 Rybczynski, if you could please read
8 the public notice.
9 MS. RYBCZYNSKI: Please take notice that pursuant to a
10 Resolution passed by the Town Board
11 on April 5, 2004, a public hearing
12 will be held pursuant to Article 2 of
13 the New York Eminent Domain Procedure
14 Law with regard to a proposal
15 substantially as follows: For the
16 acquisition through eminent domain of
17 approximately 0.804 acres of land
18 owned by Donald J. Spittler, Jr., and
19 located at SBL No: 194.00-3-24.11,
20 Farm Lot 37, Township 9, and Range 8,
21 for the purpose of remediation of the
22 former Town of Hamburg Landfill in
23 accordance with New York State

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1 Department of Environmental
2 Conservation mandates, such
3 acquisition being necessary to
4 perform the required actions and for
5 the overall benefit, safety and
6 health of the public, and such
7 property being more particularly
8 bounded and described as follows: As
9 Per the Meets and Bounds.
10 Therefore, pursuant to Article 2 of
11 the EDPL, the Town Board of the Town
12 of Hamburg will hold a public hearing
13 on April 26, 2004 at 7:15 p.m., at
14 Hamburg Town Hall, 6100 South Park
15 Avenue, Hamburg, New York 14075, at
16 which time all interested persons may
17 be heard.
18 SUPERVISOR HOAK: Thank you, Cathy. Is there any
19 correspondence on this?
20 MS. RYBCZYNSKI: No.
21 SUPERVISOR HOAK: This is a public hearing where we
22 will have comments from the public on
23 this issue and we have visited this,
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1 this isn't the first time we have
2 done it, so we will come around again
3 and before opening comments, I want
4 to have Deborah Chadsey, who
5 represents the Town, speak of this.
6 What we need though, for anyone with
7 a comment, if they could please come
8 to the front and we need their name
9 and address for public record. No
10 action will be taken for two weeks
11 which is customary for any public
12 hearing. So at this time, prior to
13 opening up to the public, I would
14 defer to Deb Chadsey. Deb?
15 MS. CHADSEY: Good evening. I am going to provide
16 you with some initial information and
17 from there we can move to the public
18 comment portion of the hearing. The
19 purpose of this project or this
20 eminent domain proceeding is to
21 acquire .8 acres of privately held
22 land in order to implement the
23 maintenance plan that the Department

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1 of Environmental Conservation has
2 required be implemented in order to
3 improve landfill cover and run off
4 conditions at the former landfill
5 site on Lakeview Road. The property
6 is located, the property to be
7 acquired is located immediately
8 adjacent to that. It's a strip of
9 land that runs along the sides that
10 is wetlands property right now. The
11 Town looked at two alternatives, one
12 of them would have moved the landfill
13 and re-graded the property and would
14 not require the acquisition of
15 private property. The second
16 alternative was to leave the landfill
17 in place to acquire a small piece of
18 private property to provide a buffer
19 that DEC mandates that must be
20 present to run the landfill. The
21 difference in cost between the two
22 alternatives is approximately half a
23 million dollars. To move the

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1 landfill would be about \$480 to
2 \$500,000 more than to leave the
3 landfill in place. There are
4 environmental concerns that are
5 raised by opening the cap that exists
6 on the landfill and taking that
7 material, moving it and recapping it.
8 It's environmentally more beneficial
9 to leave the landfill where it is. I
10 want to make sure I get everything
11 that I am supposed to have here.
12 Another consideration has been the
13 timing of the remedial work. It was
14 scheduled to begin last year. DEC
15 mandated that it would be done during
16 the previous construction season.
17 For a number of reasons, that was not
18 completed and DEC would like to see
19 the remedial work done this year.
20 For the public health, benefit and
21 safety of the community, it should be
22 done as expeditiously as possible. If
23 the landfill has to be moved, it will

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1 take considerably more time than if
2 the landfill can be re-graded and
3 recovered in place. The Town Board
4 has directed the Engineering
5 Department to commence a SEQR review
6 of this project and it will issue its
7 findings and determination and
8 resolution with respect to SEQR in
9 two weeks at its board meeting. I
10 don't have any other comments now.
11 If you please step up to the
12 microphone and give us your name and
13 address before you put your comments
14 on the record, we would appreciate
15 it.
16 SUPERVISOR HOAK: Thank you, Deb. We'll start in the
17 front and work our way towards the
18 back. Anyone who is interested in
19 making a public comment at this time,
20 if they can please come to the front.
21 Who would like to start us off?
22 MR. MONCKTON: My name is Harold Monckton. I live
23 at 2819 Lakeview Road right across
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1 from where the problem is. It's
2 nothing but a swamp. I couldn't go
3 in there with my bulldozer now and do
4 any work. I don't know how you can
5 because everything from that dump
6 drained onto that property. The Corp
7 of Engineers never went in on that
8 swamp and checked the bottom to see
9 what's in there. I think you are
10 opening up a big can of worms, a
11 bigger can than if you moved it. I
12 think you better look real deep
13 because I don't know how you can --
14 when you got wetlands right next to
15 it and water and everything else
16 laying there, how you figure you can
17 move that without disturbing what's
18 underneath there, so they say. The
19 Corp of Engineers would not check
20 that. We all asked them to, but they
21 would not do it. So I think you
22 better do a little deep thinking
23 before you try to take his land.

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1 Thank you.
2 SUPERVISOR HOAK: Thank you. You're next.
3 MR. MICHALAK: I guess I'll be next. I am Don
4 Michalak. I am an attorney from
5 Fredonia. I am working with
6 Mr. Spittler. My address for the
7 record is Suite 3, 116 West Main
8 Street, Fredonia, New York 14063.
9 This is interesting. This is
10 actually a little bit difficult
11 because I have dealt with Ms. Chadsey
12 and Mr. Boehm before and our point of
13 view on certain things is as opposite
14 as you can get. So if what I have to
15 say seems a little different than
16 what you heard, it's because my point
17 of view on this is very different.
18 First of all, I don't understand your
19 proceeding tonight. The Eminent
20 Domain Procedure Law says that you,
21 as the public condemnor, has an
22 obligation to hold a hearing and at
23 the hearing you are supposed to put

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1 forth your proposal with what I
2 understand is maps and plans and all
3 the pertinent information. I think
4 therefore the kind of hearing you are
5 suppose to have is to have a
6 presentation here by your engineers
7 with all the details, you know, with
8 all the costs and with all the
9 itemizations of the costs, etcetera.
10 And I think if you are going to rely
11 on your public hearing being the
12 brief introduction by your attorney,
13 my position would be, if this goes
14 back to Court that that's totally
15 inadequate because you have not met
16 your obligations under the Eminent
17 Domain Procedure Law to make a proper
18 presentation to the public and make a
19 record of what you plan to do.
20 Secondly, I would think before you
21 have this public hearing, you would
22 have to have your SEQR hearing. I
23 think the State Environmental Quality

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1 Review Act needs to be considered
2 before you do anything else. There
3 may be some argument that you can't
4 decide anything else. But I think
5 procedurally your SEQR obligation
6 comes first. There is not a table
7 here, but I think I can handle this a
8 piece at a time. I am not sure what
9 your process is to submit things, but
10 I do have a first package of
11 information to submit.
12 SUPERVISOR HOAK: Hand it to the clerk.
13 MR. MICHALAK: What I have submitted to the clerk is
14 a package of photographs and I am not
15 sure how many of you have personally
16 viewed the site, but just to make a
17 record of pretty much what is on the
18 site, we put together a set of
19 photographs. I will describe them
20 quickly. Obviously, we are not going
21 to spend too much time on them. The
22 other thing I have done is you have a
23 topographical map, which I assume is

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1 in your file, and I have an extra
2 map. The photographs start up by the
3 thruway on the -- that would be the
4 northwesterly corner and they pretty
5 much go down the property line
6 southerly towards the road. I will
7 just go through them real quickly,
8 for the record. The first photograph
9 is at the northerly end of the
10 property you intent or would like to
11 take and it's looking easterly
12 through a gate towards the landfill.
13 It shows the landfill in the
14 background. The landfill is about 20
15 feet above the grade you are standing
16 on when you are by the gate. The --
17 if I am wrong on the 20 feet, the
18 topo map, you know, has radiants and
19 things. I don't claim it to be
20 exactly 20 feet, but it's
21 approximately 20 feet or so. The
22 second photograph is looking down the
23 property line and it shows the area

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1 in question as a tree farm, Christmas
2 tree farm. The terminus of your
3 taking would be past that little pine
4 tree which is in the foreground. You
5 are intending, apparently, to take
6 fill and fill from the high ground to
7 the left all the way into those
8 trees. As you can see, this area is
9 not wetland and it's not scrubland.
10 It's an improved piece of property.
11 The third photograph is moving south
12 of that, you are looking at the face
13 of the landfill. One reason for this
14 picture is, you will see as you get
15 further down the property line, that
16 the condition is substantially
17 different. The fourth picture is
18 looking south through the last rows
19 of the pine trees at a large willow
20 tree. That willow tree pretty much
21 marks the boundary where the tree
22 farm ends and the wetland begins.
23 That's also pretty clearly, well not

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1 pretty clearly, it's absolutely
2 marked on the type of topographically
3 map. The next picture is looking at
4 that willow tree, again looking east
5 towards the landfill and it gives you
6 some idea of the height of the fill
7 that's there and the condition which
8 it's pretty uniform at that point.
9 The sixth picture is looking back at
10 the tree area from the wetland to
11 give you an idea that that whole
12 northern part of Mr. Spittler's
13 property is planted in organized
14 trees. The seventh picture takes you
15 down the property line near the
16 junction with the wetland. It gives
17 you an idea of what the situation is
18 basically that you are planning to
19 fill, at least the edge of it. The
20 eighth photograph is looking, it must
21 be west, into the wetland from the
22 bank and it starts showing the type
23 of debris that is scattered about. I

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1 am not sure what that piece of metal
2 is, but it's obviously pretty tall.
3 It's probably three feet off the
4 ground or something like that. The
5 ninth photograph is one of the larger
6 trees that's in the area where the
7 wetland pretty much starts. It's
8 south of the willow tree. The tenth
9 photograph is a close up that shows
10 the width of that tree as probably
11 somewhere around 21 inches or
12 something like that. The eleventh
13 photograph would be if you turn and
14 look towards the landfill, you are
15 looking up the slope towards the
16 crest of the landfill and it starts
17 showing the kinds of rubble that is
18 exposed in this area, actually it
19 gets worse and our position is that
20 you have got this sort of a hodge
21 podge grade with all kinds of
22 landfill material showing and that
23 should be drawn back to where it

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1 belongs, inside whatever your setback
2 was when the landfill was approved.
3 The twelve picture is looking to the
4 right of the tree back into the
5 wetland which you are intending to
6 take so you can fill. The thirteenth
7 picture is a typical view of the
8 wetland to show that it's a desirable
9 piece of property, that it's not just
10 some useless muddy bog or something.
11 The fourteenth picture is another
12 shot of the wetland. The fifteenth
13 picture is a shot looking from the
14 elevation of the landfill down to the
15 wetland to give you some idea of how
16 high you are and how much fill you
17 are talking about putting in there.
18 The sixteenth picture is also a view
19 down to the wetland from the
20 landfill. The seventeenth picture
21 gives you an idea if you walk onto
22 the landfill a bit and look back,
23 what the lay of the land is and you

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1 can see that the landfill itself on
2 the top is relatively uniform and it
3 drops down in a couple of tiers and
4 when you get towards that line of
5 trees, where apparently none of this
6 material should even have gotten
7 close to, is where you start finding
8 all the exposed rubble and it
9 certainly starts showing, which I
10 think is admitted, that you have
11 plenty of room if you dragged this
12 material back to place it. The
13 eighteenth picture is a view of what
14 the bank looks like in this area.
15 The nineteenth picture is a -- some
16 sort of refrigerator or something
17 sticking out of the ground. The
18 twentieth picture is another piece of
19 material. It has a ruler there which
20 shows that that is about two feet or
21 more exposed. One of the questions
22 there being your engineer has, I
23 believe, at least in a couple of

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1 places, says that he thinks these
2 things are exposed because the cover
3 material has eroded and is now gone,
4 implying that these things were once
5 covered. If you look at these
6 pictures, I would ask you, have you
7 had your engineer try and tell you if
8 these were covered, how much cap
9 material was there and what took it
10 away and where did it go? We are not
11 talking about minor amounts. If you
12 had all these things covered the
13 whole length of this property, I
14 would think I would be interested to
15 know, well how much material was
16 eroded from here and how and why and
17 where did it go and is this only
18 happening at this location of the
19 landfill or is it happening all over
20 the landfill? If it's not happening
21 all over the landfill, why is it
22 happening here and if we are going to
23 cap this, what are we getting into.

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1 I mean, do we have a situation that
2 for some reason arose here? I think
3 you have an obligation, both under
4 SEQR and otherwise, to get some good
5 advise on those things before you
6 would make a decision. Twenty one
7 and twenty two are photographs of
8 basically a hole, that is one of the
9 holes that like sunk into certain
10 parts of this land and one of the
11 points to be made here is that by
12 asking the Town to do what the DEC
13 asks you to do in the first place,
14 which is move this material back, we
15 are not asking you to destroy a
16 valuable asset. In other words, this
17 is not a capped landfill that has a
18 pristine cover and it's all graded
19 and seeded. We are not asking you to
20 dig into something like that and
21 bulldoze it back. What we are saying
22 is, this area is just a mess and that
23 to move it back where it belonged is

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1 certainly a reasonable thing to ask.
2 Our other point on that, which I just
3 might as well make at this juncture
4 is, I believe, there would have been
5 probably something like a fifty foot
6 setback requirement when the landfill
7 was first permitted. I don't know if
8 that's the exact figure because I
9 have never seen the documents and one
10 thing we are going to ask you to do
11 tonight is make a proper record and I
12 think the documents that went with
13 the initial approval of this landfill
14 need to be put in your record, so
15 that people can look at what you were
16 supposed to do. I honestly don't
17 know what you were supposed to do.
18 There is some discussion about fifty
19 feet. There is a letter from your
20 Town Engineer to one of the
21 Councilmen that is in your Town
22 Attorney's file. I have the date, I
23 probably will put that in the record

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1 later, but I believe he responds from
2 memorandum from Mr. Spittler where
3 fifty feet is mentioned. I think he
4 agrees in that memo that I saw, that
5 it was a fifty foot setback.
6 Nevertheless, I assume there must be
7 records from DEC and the permit
8 process that set down the parameters
9 of how this site was supposed to be
10 handled and I think those need to go
11 into the record to make a proper
12 record here. I also think that all
13 the records on when this site was
14 closed need to go into the record
15 here and the photographs that I have
16 been showing you that has these
17 exposed pieces of, I guess you could
18 call it debris or rubbish or whatever
19 it is, you know, raises a fascinating
20 question. My understanding is that
21 the permit for this site was revoked
22 sometime in the 70's or 80's and that
23 the Town was ordered to close the

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1 landfill which it did and that
2 apparently, I have been told, that
3 DEC approved the closing. Well
4 again, I have never seen the records
5 of the closing or what DEC said at
6 the time of the closing and I would
7 be very interested to see those
8 records and think that those records
9 should be part of this proceeding
10 record also. And if the closing was
11 approved, I think you would have to
12 imply from that that therefore the
13 fifty foot setback at the time of the
14 closing was not violated and yet
15 today it's full of material, perhaps
16 15 to 20 feet thick in the area where
17 there should be no material. So it
18 begs the question, how did it get
19 there or was it there before the
20 closing and the closing was approved
21 nevertheless and in your brief to the
22 Appellate Division, it's either page
23 5 or 11, but that doesn't matter, it

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1 sets forth that you believe that the
2 materials migrated over the last 20
3 years. I would be interested to know
4 if, you know, the engineers from your
5 consultant, is it SAI, I think those
6 are the initials, believe these
7 materials really migrated and if it
8 migrated, that means it migrated
9 fifty feet and beyond into
10 Mr. Spittler's property. So to me,
11 that would raise the question what is
12 going on here? How can you have a
13 closed landfill that is approved and
14 then things are migrating around
15 fifty feet or so and you are telling
16 us that what you want to do now is
17 just cover it. Well if it's
18 immobile, what are you covering and
19 what is going on in there? And the
20 other part of this is, I think it's
21 absolutely clear that the material
22 that is there, is the Town's
23 responsibility. I mean, you know, no

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1 matter how it got there and I think
2 there must have been a setback
3 requirement which has been violated
4 and I think there is an encroachment
5 onto Mr. Spittler's property, which
6 in my view, is a trespass and that
7 the Town's responsible for it,
8 whether or not we ever find out
9 exactly how it came to be. I mean,
10 there is no question that it now is.
11 So my opinion would be, since the
12 Town created a problem, the Town
13 needs to correct the problem and the
14 proper thing to do if you are
15 trespassers to correct the problem is
16 to remove the trespass, not to take
17 more land. My opinion is that you do
18 not have a constitutional or legal
19 right to use eminent domain because
20 the problems were all caused by the
21 Town and are the responsibility of
22 the Town and were wrongs done by the
23 Town, I believe, in violation of the,

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1 you know, DEC parameters and also in
2 violations of Mr. Spittler's private
3 property rights. Going on with the
4 photos, the twenty third photo is a,
5 I guess, it's a drum. I am not sure
6 what kind of a drum it is, whether
7 it's a fifty gallon or whatever, I am
8 not sure. The photo twenty four is
9 another exposed drum. Photo twenty
10 five is a further back view from one
11 of the earlier photos and that's just
12 another drum on the surface to the
13 right. Photo twenty six is another
14 drum that shows that it's rusted
15 through and cracked open, you know,
16 and I don't know if anybody has or
17 plans to look at those drums and see
18 what is in there or see what used to
19 be in there and if they are dry or
20 any evidence that things leached out
21 and if so, where is it now? I mean,
22 your plans, to the extend that I have
23 heard them, say that using Option 2,

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1 you don't have to do anything except
2 cover it up. Which to me seems, at
3 least you have to look up what you
4 are covering up and do something
5 appropriate to treat what you see
6 correctly and not just close your
7 eyes to it and cover it up. The same
8 with photographs twenty seven and
9 twenty eight, these are all along the
10 property line still, just like I said
11 in the beginning, we are working
12 south down the property line. These
13 are some metal tubing. I am not sure
14 if it's aluminum or what kind of
15 metal. There's a hollow, hollow
16 tubing and lots of coils of this
17 which seems to contain some sort of a
18 liquid. I have no idea, it could be
19 water, but who knows what it could
20 be. The next few pictures, 29, 30,
21 31, 32 and 33 and 34 and 35 basically
22 are details of just items that are
23 exposed in this area, just to show --

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1 give you some feel of the extent that
2 this is not a localized one thing
3 here and one thing there. It's the
4 whole area shows all kinds of exposed
5 landfill material, some of which
6 interestingly is a question that I
7 would like to ask is what I think
8 should be put in the record, did the
9 original landfill approval approve
10 this landfill for residential, it's a
11 residential landfill, and if that's
12 the case, if you look at some of the
13 things that are depicted in these
14 photographs, I would ask your
15 experts, who you need to rely on for
16 your engineering, are these materials
17 residential? I can't state a
18 definitive opinion on it as an
19 attorney, but I certainly would have
20 a question. They certainly don't
21 look too residential to me. Thirty
22 six shows just another view of the
23 basic condition of the slope in

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1 there. These pictures also show one
2 other interesting thing, which is,
3 this whole area has trees and shrubs
4 and bushes and things, some of which,
5 like the one we showed the
6 measurements of, under your tree
7 ordinance, would be, I forget what
8 you call it, specimen tree. So I
9 suppose you have to consider whether
10 you need to give yourself a permit to
11 cut these things down and clear them
12 under your tree ordinance. Thirty
13 seven's picture is the southern
14 terminis of where you would have your
15 landfill, so to the right, which
16 would be, to the west would be where
17 you're taking would end and go out
18 into the wetland. Looking through
19 the trees which you see there is the
20 Town Highway Department parking area
21 or facility. Photo thirty eight is
22 just walking up a little further to
23 show as you look across an area that

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1 also has cattail type growth to the
2 Highway Department. Thirty nine is
3 moving all the way across to the
4 other side of Mr. Spittler's property
5 looking back across the wetland at
6 the area that we were just talking
7 about. To the left, the trees that
8 are on the landfill and I think if
9 you go with your Option, that entire
10 set of trees you will have obviously
11 have to be obliterating because you
12 will be filling way out into the
13 wetland. I think it's something like
14 45 feet or so, without looking at the
15 drawing. I might be a little bit
16 off, but I think that's about it.
17 Photo forty is up on the landfill
18 looking back at the area in question,
19 further away than the other picture,
20 and it kind of shows you the landfill
21 itself is sort of a graded flat-ish
22 area. If you look around, it does
23 have some highs and lows, but

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1 generally the character of the
2 majority of the landfill is quite a
3 bit different than the area we are
4 talking about. The area we are
5 talking about is really a pile of
6 rubble that, I suppose, is a good
7 question of whether it was ever
8 really covered or if it was dumped
9 there later somehow. Forty one is a
10 view of the overall land fill up on
11 top. I think that's pretty much
12 looking north, but it might be
13 slightly east, I am not that familiar
14 with the site. Number forty two is
15 definitely looking northerly, sort of
16 in the middle of the landfill, to
17 give a comparison of what the
18 majority of the landfill looks like.
19 Forty three is when you get up
20 towards the thruway, towards the
21 northerly part of the landfill, there
22 is one monitoring -- well, you can
23 see up there in the wet area up

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1 there. Forty four, I partly did just
2 to have some closure here, because
3 when you are standing here on the
4 thruway edge of the landfill before
5 it drops down, you can look west and
6 there is Mr. Spittler's property with
7 the gate where my first picture
8 started and if you drop down to the
9 level of the thruway area looking
10 back to the gate just to complete the
11 circle, is to show how the series of
12 photographs, you know, works out with
13 some organization.
14 Now, I did have a couple comments to
15 make based on your resolution that
16 you passed on April 12th of 2004,
17 which set the date for this public
18 hearing. In the first square --
19 MS. CHADSEY: Can I interrupt one second. The
20 resolution from April is not relevant
21 to this proceeding or what is going
22 forward. You are certainly able to
23 make comments since we have already

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1 have this legal argument, I let you
2 know ahead of time it's not part of
3 the record.
4 MR. MICHALAK: This is the resolution that set
5 tonight's hearing. I am sorry, the
6 date, I will relook at the date.
7 It's April 12th, which is your third
8 resolution. My points are pretty
9 straight forward. Your first whereas
10 says that you are performing these
11 actions on the landfill due to the
12 mandates and directives of the DEC,
13 so again what I am asking is, I think
14 you need to put in your record of
15 your proceedings, if you going to
16 make a decision here to go forward,
17 what are you relying on, what
18 mandates, what directives, what
19 documents are there, what consent
20 orders are there, what correspondence
21 went back and forth and that goes
22 back to my first point, that I don't
23 think you can have your attorneys

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1 just come to one of these eminent
2 domain meetings and make a brief
3 presentation like that. I think we
4 have an obligation to be here with
5 all this information and go through
6 it in detail in public, so that the
7 details can be requested and so I
8 think anything that you are relying
9 on that first whereas, whatever was
10 in your mind, when you passed this
11 resolution and you looked at this
12 first whereas, what documents and
13 things were you thinking of and I
14 think they should all be put in the
15 record by you. Since I am assuming
16 they are not going to be here
17 tonight, I would also put in a
18 request in this hearing, that I don't
19 mean to adjourn right now, but at the
20 end of tonight, that all those
21 documents that you are going to put
22 in the record, whatever you decide to
23 put in, should be made available for

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1 people to look at and come back for
 2 an adjourned date to talk about the
 3 details of what is in those
 4 documents.
 5 SUPERVISOR HOAK: Let me just comment on that. The
 6 reason that we are here is for the
 7 public input, for people like you to
 8 ask questions, and then those that
 9 can't make it, have at minimum of two
 10 weeks, if not longer, whether to call
 11 or write to either issue their
 12 comments or their questions, so then
 13 this Board can look at those comments
 14 and questions, be able to make a
 15 decision based on those questions and
 16 comments to proceed further. This
 17 isn't the first public hearing we
 18 have had on this and I know you are
 19 diabolically opposed with the legal
 20 counsel from this side. That's a
 21 legalize thing that I am really not
 22 an expert to comment on, but we will
 23 base our decision on the questions

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1 and comments that are presented to us
2 by the public, by our engineers, by
3 the DEC, by our attorneys, and this
4 is all part of the process for a
5 public hearing.
6 MR. MICHALAK: Oh, I understand that. And my
7 expectation at a hearing like this is
8 that there really would not be too
9 much discussion back and forth, so I
10 want to put my points on the record
11 of what I see here.
12 SUPERVISOR HOAK: Yes.
13 MR. MICHALAK: I have am not expecting you
14 necessarily to give me much of a
15 feedback right now tonight, but
16 nevertheless, there is numerous
17 things that I have questions about
18 and I would like to make my points
19 known, so that later somebody does
20 not say to me, well you should have
21 brought it up.
22 SUPERVISOR HOAK: Well, here's what I would ask,
23 because I have a lot of questions
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1 that you brought up that I have
2 written down. I have a stenographer
3 here who too will make a public
4 record for us to be able to address
5 all of these questions. But on the
6 deference of time, I would say our
7 normal public hearing lasts 45
8 minutes. We have gone through 45
9 minutes and they are good questions
10 and comments that you bring up. I
11 would feel there is more people in
12 the room too, that would like to be
13 able to share their comments, so I
14 would ask maybe you, if you can't
15 complete all of this tonight, by all
16 means please call our engineer, our
17 Town Board members, our legal
18 counsel.
19 MR. MICHALAK: I have an idea, too. Maybe we can do
20 this and I would be happy to do that,
21 maybe I could give the floor to some
22 other people and if there is a few
23 things I would like to say, you know,

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1 in another five minutes or so, then I
2 can come back. That makes sense to
3 me.
4 SUPERVISOR HOAK: That makes sense to me, too.
5 MR. MICHALAK: Sounds perfectly agreeable.
6 MS. CHADSEY: Can you provide us, I am not -- we
7 know where this is going. I think I
8 would like you to provide me with
9 something that validates the
10 photographs. You took them, an
11 affidavit.
12 MR. MICHALAK: I took those.
13 MS. CHADSEY: Can you just do that so that --
14 because it will part of the record.
15 MR. MICHALAK: Yes, I would be happy to do that, but
16 for the record we took the
17 photographs, I took the photographs
18 yesterday and printed them out
19 yesterday. Thank you.
20 SUPERVISOR HOAK: Thank you, Don. The floor is open
21 for a comment or question or input at
22 this time.
23 MR. BONCORE: My name is Joe Boncore. I live at
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1 2800 North Creek Road in Hamburg,
2 which is approximately 1500 feet from
3 the Spittler property in question. I
4 am owner of Monckton Trucking and
5 Excavating in Hamburg. I have been
6 pretty much kept up to speed from
7 Chip and adjoining property holders
8 and neighbors with regards to this
9 whole thing. I was -- I attended all
10 the meetings in this very room when
11 the representatives from the Army
12 Corp of Engineers, the Army itself,
13 the DEC and the Town and I saw each
14 and every one of these Board members
15 fight on our behalf at that time.
16 Pat, I am sure you remember that.
17 Now, I see kind of a turnaround here
18 and no, I am not looking for finger
19 pointing or anything like that. I
20 saw plenty of that that evening. I
21 saw the Town pointing fingers,
22 everybody, the State pointing fingers
23 at the Feds, the Corp of Engineers

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1 claiming that they didn't know
2 anything. That's neither here or
3 there. Harold Monckton has movies of
4 this going on. My -- I have seen the
5 property several times. I have been
6 back there with Chip. My own
7 professional opinion of what is there
8 is not in question here. I am
9 assuming that the Town has the where
10 with all to hire professionals that
11 can do that. We are available, by
12 the way. What I can say is eminent
13 domain -- granted I am not an
14 attorney, nor do I claim to have any
15 vast knowledge of the law, but from
16 what I have heard of this, the true
17 spirit of eminent domain reflects for
18 the public good the acquisition of
19 property. That would mean to me
20 something like putting a thruway in,
21 sidewalks, flagpole. Whether or not
22 trespassing took place, well it's
23 obviously that it did and I have

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1 known Chip Spittler for 25 years now.
2 For what it's worth, it's not about
3 the money. I don't believe
4 Mr. Spittler has presented his case
5 to the Town, to the DEC, the Feds or
6 anybody else in some act to seek
7 punitive damages against the Town or
8 anybody, nor even compensatory
9 damages. As a matter of fact, I am
10 not ensure Mr. Spittler is looking
11 for remediation. What Mr. Spittler,
12 I think, is looking for, is a true
13 reason from this Board or legal
14 counsel of the Board or of the Town,
15 as to why eminent domain is being
16 used and I hate to use the word cover
17 up because that's not a word that
18 should be brought up in a public
19 forum, not at this time. To cover up
20 what was done at one point in time, I
21 am not sure what is in there. I have
22 seen drums on the property. I have
23 seen colorations in the water on the

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1 property, which would indicate to me
2 that there is some type of petroleum
3 based product or acid there. I do
4 that kind of work for a couple of gas
5 stations in this area. I know when
6 there is something bad. I can walk
7 on that property and tell you there
8 is something bad. By acquiring three
9 quarters of an acre of property and
10 doing what -- putting a three foot
11 clay cap over it, which has already
12 been done, which is already gone, and
13 that has been done in my lifetime
14 because I remember going to that dump
15 and yes, I was in that dump and I saw
16 the tires, I saw the batteries, I saw
17 the transformers. I saw everything
18 in there. I used to go there --
19 matter of fact we'd go in with a
20 pick-up truck full of stuff and take
21 a pick-up truck load out. I am
22 personally willing to do more than
23 just come here and talk. If any

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1 member of this Board would like to,
2 at their expense of time and at my
3 expense and my time and my machinery,
4 so long as it doesn't put myself or
5 anybody member of this Board or any
6 of my equipment in danger, I will go
7 there and dig a test hole for anybody
8 that would like to see it. I will
9 even provide the yellow boots so you
10 can walk the land yourself. That is
11 what I think, and maybe I am wrong
12 here, is what truly reflects the
13 spirit of what is best for the public
14 good. If anybody in here is trying
15 to do what is best for the public
16 good, it's Spittler. He's looking
17 out for the public here, in my
18 opinion, more than anybody, because
19 he knows what's in there, just like
20 Harold Monckton knows what's in there
21 and Duke Spittler knows what's in
22 there and a couple of other people
23 that are in here knows what's in

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1 there and I know that's not what this
2 is about, whether it's with Manhattan
3 project that dumped stuff in there,
4 okay, that's neither here nor there.
5 Mr. Spittler wants what is done in
6 the best interest of the neighborhood
7 and the community as a whole. I find
8 it relatively hard to believe that
9 the remediation, a Level 1 walk
10 through, I know that there was a
11 Level 1 done there. I am uncertain
12 if there was a Level 2, which is
13 actual excavating, which I said if
14 anybody wants to meet me -- and
15 nobody from the Town Building
16 Department or Engineering Department,
17 no, the decision makers. One of you
18 four, except Mr. Quatroche is not
19 here tonight, one of you five or all
20 of you, the people who are in charge
21 of making the decision, if you would
22 like to see firsthand, not a
23 consulting firm talking to your

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1 engineering department, then talking
2 to your legal department and you
3 getting the information fourth hand.
4 If you want the information first
5 hand, we can do that. That's all I
6 have to say at this time. If anybody
7 would like to know more, I am sure
8 Harold Monckton can probably tell you
9 a whole lot more.

10 SUPERVISOR HOAK: Thank you for your comments and
11 questions and that invitation, also.
12 Thank you very much.

13 MR. SPITTLER: Good evening, my name is Donald
14 Spittler, Jr. I am the person who
15 owns the property in question. I
16 have quite a few questions really.
17 There is environmental questions,
18 ethical, as well as legal questions.
19 The legal ones I can pose, but I
20 can't have any answers for. The
21 ethical ones I think we can maybe
22 deal with, the environmental ones we
23 can maybe do something about, but

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1 first I would like to just address
2 what Ms. Chadsey said. When she
3 opened up the statement and kind of
4 gave the background in this, I am
5 curious why she didn't mention
6 anything about a trespass, which is
7 the main reason we are here, because
8 the Town didn't abide by normal laws
9 and stay on their own property. If
10 they had paid attention to what was
11 going on, we wouldn't be here today.
12 She also eluded to the idea that the
13 timing on Plan 1 and Plan 2 came out
14 together. That's not true. Plan 1,
15 which was proposed by the DEC, you
16 people were delinquent in doing that
17 plan and only after you were subject
18 to fines by the State, did you come
19 up with this idea called Plan 2. DEC
20 still favors Plan 1, according to
21 people I have spoken with and they
22 are allowing you to do this because
23 you dragged your feet so long,

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1 nothing has been done. Ms. Chadsey
2 eluded to a cap. I live there.
3 There never was a cap on that
4 property and if there was, what
5 happened to it? Did it just
6 disappear? There is spots there
7 where there's refuse materials
8 sticking out of the ground three feet
9 and it could not have been capped
10 properly. I question your figures on
11 the cost basis. You haven't shown
12 any figures. And all of those costs
13 that you are using, were generated
14 in-house. They are not outside bid
15 numbers, they're strictly your
16 numbers, we have no way of knowing
17 whether they are correct. Another
18 curious question is, in order for you
19 to do this, succeed in taking my
20 land, you have to have a sign off by
21 the Corp of Engineers to show those
22 wetlands. You haven't secured that
23 permit yet. Well, if you would go

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1 through with this and take my land
2 and not get the permit, what happens
3 then to the legitimacy of this whole
4 thing? I've got evidence that will
5 probably show up in Court, that the
6 Town of Hamburg dumped at that site
7 on a continuing basis after you lost
8 your permit. So that's something you
9 should deal with. And the real
10 reason that the DEC mandated this
11 remediation is not because of some
12 degradation on the cap, it was
13 because they discovered the trespass,
14 which I had also told the Town about
15 ten years earlier and because the DEC
16 found out that there was a trespass,
17 they said you had to clean it up.
18 None of this had been mentioned for
19 the public record. It's just been
20 curiously swept under the carpet. On
21 Friday this past week, at my request,
22 I had a Criminal Investigator from
23 the EPA out here on site. He's got

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1 some questions for you and I also had
2 some people from the Corp out there.
3 They are questioning now why your
4 paperwork that was submitted to the
5 Corp doesn't match what they see on
6 the site. Those are all questions
7 you probably better think about.
8 Getting back to the original question
9 of this landfill, the permit that was
10 originally granted to the Town to
11 dump there, involved a set of rules
12 and regulations that you ignored.
13 You ignored the setback requirement
14 to the point that you actually
15 trespassed on my property and
16 continued to dump after the permit
17 had expired. A little extra history,
18 it's my understanding that the Army
19 dumped there prior to you guys
20 dumping there, when there weren't any
21 regulations. Can you tell the public
22 just how delinquent you are in doing
23 this work? Just a question I would

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1 like to have answered. And I truly
2 do think that what I am doing here is
3 right. I think there's a question of
4 the safety of that site. I think
5 that the greater good in terms of
6 condemnation would be served by
7 moving that material and letting
8 people inspect it and test it, so it
9 will settle this question once and
10 for all. I also question Plan 2 in
11 terms of actual utility. That
12 wetland that I own is in some places
13 three to four feet deep and for you
14 to try to tell me that there's going
15 to be -- that that cap is going to
16 have any integrity at all in terms of
17 sealing that material in, I don't
18 believe it. So I had some pictures
19 also, I won't submit them right now,
20 but these were taken after the
21 landfill was closed and it shows 55
22 gallon drums stacked up. These are
23 all dated and witnesses were there

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1 when I took them so --
2 SUPERVISOR HOAK: Excuse me, I ask for the public
3 record, maybe if Cathy could get some
4 of those copies, I won't take the
5 originals from you, but if we can get
6 some copies of that. Thank you.
7 MR. SPITTLER: These are all pictures of the site
8 and another question was, was this
9 dump site, was this site closed to
10 any other municipalities when it was
11 in operation?
12 COUNCILMAN CAVALCOLI: Did you say closed to or open to?
13 MR. SPITTLER: Closed to any other municipalities,
14 because I have a photograph that
15 shows the Village of Hamburg dumping
16 after the permit has expired. But I
17 think there is room here for more
18 honesty on the Town's part, I really
19 do. I think that if you're going to
20 tell the public something, tell them
21 the whole truth and not just part of
22 it. That's all I've got to say.
23 SUPERVISOR HOAK: Just from my knowledge of it, I know
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1 the Village used it for some of their
2 trees and some of their brush that
3 they utilized to bring back into the
4 Nike site. If they did something
5 else, I am not aware of it, but I am
6 aware of them recycling and trimming
7 the trees. How about another speaker
8 before we go back to Don? A lot of
9 good questions and comments have come
10 up. I will defer to Don now to wrap
11 it up with a couple of questions and
12 comments and then we will go to our
13 regular public meeting and in the
14 interim after that, as much as the
15 Frontier students would love to stay
16 here, we'll break for five minutes so
17 you can -- you are more than welcome
18 to stay for the remaining hour or
19 two, but if you would like to adjourn
20 and get signatures from the Board
21 members, you can depart at that time,
22 and put in your hour, after the
23 public hearing is closed. Don, the

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1 floor is yours.
2 MR. MICHALAK: I will be very brief.
3 COUNCILMAN CAVALCOLI: Excuse me, Mr. Michalak, before we
4 move on, Chip, just so we don't make
5 a mistake, are these pictures for our
6 records or is this a set you need
7 back?
8 MR. SPITTLER: Those are just ones I brought along.
9 We can make them part of the record.
10 SUPERVISOR HOAK: We will make them part of the record
11 and then in the later future, you can
12 pick them up for your records, so we
13 will have them for part of this
14 public hearing?
15 MR. MICHALAK: I don't believe there is another set,
16 but we trust you to make a copy.
17 SUPERVISOR HOAK: They will be with our Town Clerk.
18 MR. MICHALAK: That's perfectly fine. Just a couple
19 of points that haven't been brought
20 up and I am not going to discuss them
21 other than to bring them up.
22 Everyone has been talking about the
23 two extreme options, which are Option

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1, to move everything back, and
Option 2, to leave everything in
place and totally fill into the
wetland. I think for SEQR purposes
and just maybe plain old, a good
practical idea, I don't know if you
had your engineers talk about a
middle option where you take less of
the wetland and grade part of the
things back and if that hasn't been
studied, you know, I think you may
have some problems with the Court if
that's not been looked at and
addressed. You also have an
interesting wetlands protection
provision in your Code which I think
you maybe have to look at and, you
know, you say that you should avoid
wetland and you strongly encourage
that they be avoided and preserved,
so now you want to do exactly what
you are saying should not happen in
your Town. I think that's pertinent

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1 substantively as to what option you
2 should be leaning towards, but it's
3 also pertinent when you do your SEQR
4 review and you are going to have to
5 decide if this is a significant
6 impact or not. When you are on
7 record passing a statute, that says
8 we strongly recommend you don't fill
9 in any wetland anywhere in your Town
10 and now you want to take this huge
11 chunk of this really nice wetland and
12 fill it up, and so I think if you are
13 thinking of making a decision, this
14 is an unlisted action that you can
15 pass a short form environmental
16 assessment form -- I mean that's
17 obviously one topic that we will
18 suggest that you did not follow
19 through completely on. I also don't
20 know what you know about the wetland,
21 whether you have done tests of the
22 current water quality or the depth of
23 the biological material on the bottom

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1 and things like that, but it's my
2 understanding that nobody has been in
3 there to do any testing, yet you want
4 to fill it up. I am not so sure how
5 you can make a proper decision
6 without having knowledge. You know,
7 we also don't know what the proposed
8 method is to do this if you go
9 forward with your plan. I mean, are
10 you going to build a dike and water
11 the wetlands and the part you're
12 going to take and put in some sort of
13 a seal or what? We don't know any of
14 the information which is the same
15 with costs. I mean, you had some
16 projected costs that had two figures
17 where the high figure for Option -- I
18 am sorry, the low figure for Option 1
19 was actually lower than the high
20 figure for Option 2. I may have that
21 backwards, but anyway the original
22 figure show that the option you are
23 suggesting could turn out in your own

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1 figures be the more expensive. Now
2 you have new figures where the option
3 you want has become cheaper and the
4 other option has short of an average
5 final proposal. Well, I've never
6 seen a itemized list and I do think
7 that information should be part of
8 the record and be available to the
9 public to look at, to actually not
10 just have this sweeping thing that
11 says this will save us half a million
12 dollars, period. No data, no backup,
13 no details, where is the itemization,
14 who did the work, why do they have
15 that feeling now, especially since
16 not too long along they had different
17 numbers. And I also think there's a
18 question here of how far you can go
19 before you have, you know, the Corp
20 of Engineers' approval, you know,
21 which perhaps you might not get and
22 also I don't know -- I honestly don't
23 know the answer to this question,

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1 whether for SEQR, the Corp of
2 Engineers is an involved agency and
3 has to be involved in the decision of
4 who the lead agency for the SEQR
5 decision. I also don't know if there
6 has been consideration given to where
7 the water goes. My understanding is
8 that it leaves the Spittler property,
9 crosses the road and pretty quickly
10 gets right into 18 Mile Creek, a
11 direct tributary and I think the Town
12 has labeled 18 Mile Creek, either a
13 sensitive or critical environmental
14 area. So I think the run off is
15 pretty directly going into what you
16 designated as a critical
17 environmental area, which to me
18 implies that there should be some
19 pretty serious studies of what the
20 impact will be. That gives you a
21 flavor of, you know, what I think
22 this is. I appreciate your time.

23 SUPERVISOR HOAK: Thank you, Don. I don't know if
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1 legal counsel wants a closing remark
2 or are we going to make a motion? At
3 this time, I make a motion to close
4 the public hearing. We encourage
5 anyone that has a comment or question
6 to contact the Board or Engineering
7 Department or the Legal Department.
8 COUNCILMAN CAVALCOLI: It should be the Legal Department.
9 SUPERVISOR HOAK: I'd make a motion to adjourn the
10 public hearing. I need a second.
11 COUNCILMAN CAVALCOLI: Second.
12 SUPERVISOR HOAK: Seconded by Councilman Cavalcoli.
13 All those in favor say aye?
14 THE BOARD: Ayes.
15 SUPERVISOR HOAK: Opposed? Carried. We'll take a five
16 minute recess.
17
18 (Whereupon, proceedings concluded.)
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CERTIFICATE OF REPORTER

I, WENDY ROYCE McCANN, hereby certify that I did report in machine shorthand the foregoing proceeding had in the above-entitled matter, at the time and place hereinbefore set forth; I do further certify that the transcript consisting of 58 pages, is a true and correct transcript of my said stenographic notes.

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WHEREAS, the Town of Hamburg has received a rezoning application from Zak Management/K Technologies, for the property located at 5424 Abel Road, and

WHEREAS, the site contains an existing business which is a legal non-conforming use, and has a variance to expand greater than the 25% expansion limitation, and

WHEREAS, the applicant has requested that the Town pursue the appropriate zoning for this property,

Moved: Cavalcoli Seconded: Kesner
Roll Call: Ayes: Hoak, Cavalcoli, Hochul, Kesner
 Noes: None
 Carried

March 22, 2004	Town Board Meeting
April 5, 2004	Work Session

RESOLVED, that the Town Board approve the termination of personnel for the Public Safety Dispatch, due to his resignation, as follows:

- RESOLVED**, that the Town Board approve the hiring and termination of personnel for the Adult Day Services as follows:

- Moved: Cavalcoli
Seconded: Hochul
Roll Call:
Ayes: Hoak, Cavalcoli, Hochul, Kesner
Noes: None
Carried

VI.

RESOLVED, that the Town Board approve the hiring and termination of personnel for the Building and Grounds Department as follows:

1.	Kyle Hanson	P/T Laborer	04/19/2004	\$7.75
2.	Sam Fraser	P/T Laborer	04/19/2004	\$9.09
3.	Sam Fraser	P/T Laborer	04/27/2004	Terminate
4.	Sam Fraser	Seasonal Laborer	04/28/2004	\$9.09

Moved: Cavalcoli Seconded: Kesner
Roll Call: Ayes: Hoak, Cavalcoli, Hochul, Kesner
 Noes: None
 Carried

VII.

RESOLVED, that the Town Board approve the hiring and termination of personnel for the Recreation Department as follows:

1.	Sigeti, Andrew	ER7251(225) Rec. Attendant	04/05/2004	\$6.75 P/T
2.	Banner, Derek	A7265(230) Rec. Attendant	04/06/2004	\$6.35 P/T
3.	Jacobs, Kimberly	B7310(320) Rec. Attendant	04/06/2004	\$9.50 Seas. P/T
4.	Donovan, Cornelius	B7310(320) Rec. Attendant	04/06/2004	\$9.35 Seas. P/T
5.	Shea, Daniel	A7265(230)	04/06/2004	Terminate
6.	Shea, Daniel	A7265(230) Rec. Attendant	04/07/2004	\$7.00 P/T
7.	Schulz, Gregory	ER7251(225) Rec. Attendant	04/07/2004	\$8.75 P/T
8.	Gibson, Michael	ER7251(225) “ “ Rec. Attendant	04/12/2004 “ “	\$6.50 P/T Reg. rate \$7.25 P/T Temp. rate
9.	Kemmer, Daniel	A7270(238) Rec. Attendant	04/14/2004	\$7.00 Seasonal P/T
10.	Hansen, Kyle	A7265(230)	04/16/2004	Terminate
11.	Gardner, George	ER7251(225) Rec. Attendant	04/19/2004	\$9.50 P/T
12.	Aroune, Paul	B7310(320)	04/17/2004	Terminate
13.	Aroune, Paul	ER7251(225) Rec. Attendant	04/19/2004	\$9.50 P/T
14.	Mann, Lindsey	B7310(320) Rec. Attendant	04/15/2004	\$6.00 Seasonal P/T
15.	Steger, Joseph	ER7251(225) Rec. Attendant	04/14/2004	\$9.50 Seasonal P/T
16.	Pasquarella, Michael	B7310(320) Rec. Attendant	04/19/2004	\$9.50 Seasonal P/T
17.	Collins, Ann	B7310(320) Rec. Attendant	04/19/2004	\$7.00 P/T
18.	Duggan, Kathy	A7180(215)	04/18/2004	Terminate
19.	Birmingham, James	“	05/02/2004	Terminate
20.	Duggan, Kathy	A7180(215) Rec. Attendant	04/19/2004	\$9.50 P/T
21.	Birmingham, James	“	05/03/2004	\$9.00 Seasonal P/T
22.	DiOrio, Christine	ER7251(225) Rec. Attendant	05/12/2004	\$9.50 Seasonal
23.	Gibson, Michael	“	04/21/2004	\$6.50 Seas. Reg. rate \$7.25 Seas. Temp.rate
24.	McFeely, Maria	“	05/12/2004	\$6.25 Seas.
25.	Omphalius, Ellen	“	05/05/2004	\$7.25 Seas.
26.	Sigeti, Andy	“	05/12/2004	\$6.75 Seas. Reg. rate \$7.00 Seas. Temp.rate

27. Schulz, Gregory	ER7251(225)	05/05/2004	\$8.75 Seas.
28. Wakelee, Robert	“	05/12/2004	\$6.75 Seas. Reg. rate
			\$7.50 Seas. Temp.rate

[illegible]

VIII.

RESOLVED, that the Town Board grant permission to the Building and Grounds Department to advertise for bid to purchase 2 New or Unused pickup 4x4 Supercab 4door Rangers or Equivalent. Funds are available in account #H24-7989.303

Moved: Hochul Seconded: Kesner
Roll Call: Ayes: Hoak, Cavalcoli, Hochul, Kesner
 Noes: None
 Carried

IX.

RESOLVED, that the Town Board authorize the Recreation Department to issue alcohol waivers for the following Taylor Road rentals in May 2004:

5/01/04	5/02/04	5/07/04	5/08/04
5/09/04	5/12/04	5/14/04	5/15/04
5/16/04	5/21/04	5/22/04	5/23/04
5/27/04	5/28/04	5/29/04	5/30/04
5/31/04			

Moved: Cavalcoli Seconded: Hochul
Roll Call: Ayes: Hoak, Cavalcoli, Hochul, Kesner
 Noes: None
 Carried

X.

RESOLVED, that the Town Board authorize the Finance Department to increase the change fund in the Recreation Department Office cash drawer from \$50.00 to \$100.00. Increased program offerings and a higher volume of transactions has dictated this change.

Moved: Hoak Seconded: Cavalcoli
Roll Call: Ayes: Hoak, Cavalcoli, Hochul, Kesner
 Noes: None
 Carried

XI.

RESOLVED, that the Town Board authorize the Finance Department to increase the change fund in the Fitness Center cash drawer from \$50.00 to \$100.00. The selling of beach/boat launch permits and a higher volume of transactions has dictated this change.

Moved: Cavalcoli Seconded: Hochul
Roll Call: Ayes: Hoak, Cavalcoli, Hochul, Kesner
 Noes: None
 Carried

RESOLVED, that the Town Board authorize the Recreation and Buildings & Grounds Departments to accept the low bid of Marturano Recreation Company (Game Time) for four playground structures and installation for a total of \$52,252. Funding is to be transferred from the Trust and Agency Account (cash in lieu of land) to H227020.206 Capital Playground Equipment Fund in the amount of \$52,252.00.

Marturano	\$52,252.00
Universal Play Systems	\$56,028.00
Miracle	\$60,290.00
Universal Play Systems	\$61,928.00
RE Woodson	\$66,800.00
John Curtis Design	\$67,423.00

RESOLVED, that the Town Board resolution authorize the Recreation Department to participate in the New York State Recreation and Parks Society “Careers in Parks and Recreation” program. This job shadow/internship program would allow two high school students looking toward a career in parks and recreation an opportunity for training and experience. The participants would be paid by the Town with a portion of their salary reimbursed by the New York State Recreation and Parks Society.

RESOLVED, that the Town Board approve a refund of \$59.00 for Building Permit #2004-136 for a detached garage that the owner decided not to build. Refund money as follows:

RESOLVED, that the Town Board approve the use of the Hoover Beach Playground/Community Building for the Hoover Beach Community Association to hold their Annual Summer Picnic on Saturday, July 24, 2004 from Noon to Midnight.

Moved: Hoak Seconded: Kesner
Roll Call: Ayes: Hoak, Cavalcoli, Hochul, Kesner
 Noes: None
 Carried

WHEREAS, the Town of Hamburg Department of Community Development is the owner of the following described parcel of land; 160.09-5-4.11, located near paper North Street, Caitlin Terrace and paper North Streets, and

WHEREAS, said premises were purchased utilizing federal Community Development Block Grant funds.

BE IT FURTHER RESOLVED, that any bidder shall realize that the property is currently zoned PR; Park Recreational Lands District and also that the following deed restrictions and easements shall accompany said sale of the land to the highest bidder.

A) The following recreational uses, both passive and active, shall not be allowed for use and will be included as a deed restriction within any sale of said parcel of land.

- A) The following easements may be included within any sale of said parcel of land.

- BE IT FURTHER RESOLVED**, that Patrick H. Hoak, as Supervisor of the Town of Hamburg, is hereby authorized to execute all documents that may be required to effectuate the sale and transfer of all right, title and interest of the Town of Hamburg in said property and that any and all proceeds from the sale of said premises are to be treated as federal program income as required within 24 CFR, Subpart J; Section 570.504 (Regulations pertaining to the Community Development Block Grant program).

Councilwoman Kesner comments that the Town has been working with the Hamburg Natural History Society to preserve the land adjacent to the Penn Dixie site to preserve it and protect the surrounding neighborhoods.

Councilman Cavalcoli comments that, since this land is not going to be used by Community Development, they want to use the money elsewhere. His original involvement was with the Natural History Society and the Penn Dixie Site. There were three different parcels, one was used for affordable housing, one was used for the Penn Dixie site and the third was left for what they thought would be used for incubator industries. That has not happened over the past couple of years and Mr. Hull and Councilwoman Kesner talked about using that money in another area of the Town for Community Development and Housing work. So the Town Board feels that, in the best interests of this project, that they put this land up for sale. They are restricting the uses so that it will not impact the Penn Dixie site or the surrounding neighborhood.

Joe Kilian, United Council, questions what exactly could you do with this land.

Councilman Cavalcoli comments that it could be a picnic area or some sort of park development. Because that area is very pristine they do not want to allow recreational/commercial uses.

Councilwoman Kesner comments that they are hoping to keep it as a buffer from the existing residents.

Councilman Cavalcoli comments that if the Natural History Society feels they have sufficient funds they could put a bid on it.

XVII.
RESOLVED, that the Town Board approve the hiring of personnel for the Building and Grounds Department as follows:

1. Joseph Bauman	Seasonal Laborer	05/17/2004	\$7.00
2. Jacob Krause	Seasonal Laborer	05/17/2004	\$7.50
3. James Morgan	P/T Laborer	05/03/2004	\$9.09

Moved: Hoak Seconded: Hochul
Roll Call: Ayes: Hoak, Cavalcoli, Hochul, Kesner
 Noes: None
 Carried

RESOLVED, that the Town Board approve the hiring and termination of personnel for the Recreation Department as follows:

1.	Drew, Adam	B7310(320)	04/25/2004	Terminate
2.	Drew, Adam	B7310(320)	04/26/2004	\$7.50 P/T
		Rec. Attendant		
3.	Domanowski, Matthew	A7270(238)	04/26/2004	\$9.00 P/T
		Rec. Attendant		

Moved: Hoak Seconded: Hochul
Roll Call: Ayes: Hoak, Cavalcoli, Hochul, Kesner
 Noes: None
 Carried

XXI.

BE IT RESOLVED, that an advertisement for bids for the construction of the 2004 Waterline Replacement Project along Lake Shore Road (NYS Route 5) between Camp Road and Pleasant Avenue be published in the official Town newspapers, with bids to be received until 10:00 am (local time) on May 20, 2004.

Moved: Cavalcoli Seconded: Kesner
Roll Call: Ayes: Hoak, Cavalcoli, Hochul, Kesner
 Noes: None
 Carried

XXII.

RESOLVED, that the Town Board authorize the Town Supervisor to sign an agreement with Integrated Systems. This agreement is to purchase support hours for Network and Computer Support. The total cost for 100 hours is \$6,500.00. Funds are available in A1680.423.

Moved: Hoak
Seconded: Cavalcoli
Roll Call:
Ayes: Hoak, Cavalcoli, Hochul, Kesner
Noes: None
Carried

XXIII.

RESOLVED, that the Town Board approve the membership of the following into the Newton Abbott Fire Company, Inc. as follows:

David Jensen
501 Lindsey Lane, Apt. 501
Orchard Park, N.Y. 14127

Moved: Kesner Seconded: Hochul
Roll Call: Ayes: Hoak, Cavalcoli, Hochul, Kesner
 Noes: None
 Carried

XXIV.

RESOLVED, that the Town Board approve the termination of personnel for the Police Department as follows:

1. Bizub, Danielle	Part-Time Clerk	05/15/2004	Terminate
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Moved: Hoak Seconded: Cavalcoli
Roll Call: Ayes: Hoak, Cavalcoli, Hochul, Kesner
 Noes: None
 Carried

XXV.

BE IT RESOLVED, that the Town Board approve the American Legion Auxiliary Unit 527 hold its annual Poppy Distribution Day on Friday, May 14, 2004. The poppies will be distributed to the public and all donations received are used for rehabilitation programs for the hospitalized and disabled veterans in this area, and aid for their families.

Moved: Hoak Seconded: Kesner
Roll Call: Ayes: Hoak, Cavalcoli, Hochul, Kesner
Noes: None
Carried

XXVI.

RESOLVED, that the Town Board accept the bid of James Karamonos for \$ 3,878.00 per season for the 2004 and 2005 Town Beach concession operation. The only other bid submitted (by Justin Kruszk) was for \$ 1,675.00 per year.

Moved: Cavalcoli Seconded: Hochul
Roll Call: Ayes: Hoak, Cavalcoli, Hochul, Kesner
Noes: None
Carried

XXVII.

RESOLVED, that the Town Board authorize the Recreation Department to order arts & crafts, athletic equipment and staff uniform items from bid lists opened on April 5th. A re-cap sheet is attached. Some items will not be ordered due to current stock.

Moved: Hoak Seconded: Cavalcoli
Roll Call: Ayes: Hoak, Cavalcoli, Hochul, Kesner
 Noes: None
 Carried

RESOLVED, that the Town Board approve the Audit of Cash Disbursements as follows:

OPERATING FUND:

BATCH #49	\$ 415.00	912429
BATCH #50	\$132,421.23	912502 – 912758
BATCH #51	\$285,000.00	912500
BATCH #52	\$187,907.73	912761 – 912893
BATCH #53	\$123,766.30	912894 – 912993
BATCH #54	\$ 10,000.00	912995
BATCH #55	\$725,000.00	912996
BATCH #56	\$ 700.00	912997
BATCH #57	\$ 33.00	912999
BATCH #58	\$219,931.27	913000 – 913118
PRTRN P/R 8	\$526,085.40	912501
PRTRN P/R 9	\$516,277.43	912998

TOTAL OPERATING FUND DISBURSEMENTS: \$2,727,537.36

TRUST & AGENCY:

BATCH #18	\$509,404.78	570143 – 570147
BATCH #19	\$ 20,267.33	570148 – 570159
BATCH #20	\$ 9,776.93	570160 – 570175
BATCH #21	\$501,285.98	570176 – 570180
BATCH #22	\$ 8,997.34	570181

TOTAL TRUST & AGENCY DISBURSEMENTS: \$1,049,732.36

CAPITAL FUND DISBURSEMENTS:

BATCH #28	\$850,000.00	720170 – 720171
BATCH #29	\$ 52,949.00	720172 – 720179
BATCH #30	\$ 15,901.50	720180 – 720185
BATCH #31	\$700,000.00	720186
BATCH #32	\$129,031.05	720187 – 720202

TOTAL CAPITAL FUND DISBURSEMENTS: \$1,747,881.55

PAYROLL:

PR# P/R8	\$489,612.42
PR #P/R9	\$480,408.39

TOTAL PAYROLL DISBURSEMENTS:	\$ 970,020.81
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PETTY CASH:	\$	0.00
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TOTAL CASH DISBURSEMENTS SUBMITTED FOR AUDIT: \$6,495,172.08

Moved: Hoak Seconded: Hochul
Roll Call: Ayes: Hoak, Cavalcoli, Hochul, Kesner
 Noes: None
 Carried

Correspondence

35, 36, 37, 38, & 39 – Supervisor Hoak comments that they all concern the concession stand at the golf course and what a great job Mary Nosky did there. This went out to bid and someone had a higher bid than Mary and so they have a new person at the golf course. They wish Mary well and thank her for her services.

40 – Supervisor Hoak comments that this was from Senator Stachowki concerning a grant application. He thanks the Senator for following up on that.

41 – Supervisor Hoak comments that this is from SABAH thanking him for his donation. The Town was the initiators in donating ice time to handicapped children. They now are putting on ice shows at HSBC arena.

42 – Supervisor Hoak comments that this is a thank you from Mrs. Monckton concerning her friend Margaret Howe. Patrolman Trask checked on her, made sure she was safe, loaned her his cell phone when he found our hers was out of order and checked on her everyday until her situation was taken care of. A copy of this should go into Patrolman Trask's personnel file.

43 – Supervisor Hoak comments that they made a BOCES presentation and the person in charge was very pleased with their efforts. A copy should go into their personnel file.

44 – Supervisor Hoak comments that a copy of this should go to Traffic Safety, Engineering and Planning. This concerns the planned Lane changes on Route 5.

46 – Supervisor Hoak comments that he will set up a meeting with Belmont Shelter to discuss cooperative efforts to help our residents.

49 – Supervisor Hoak asks that Mr. Spute submit this for their 2005 Budget.

50 – Supervisor Hoak refers this to Chief Coggins.

47 – Councilman Cavalcoli comments that residents from the Thurston Ave. area sent in letters addressed to him regarding water problems on the street and sewer back-up problems in wet weather and asking for assistance. He responds that Engineering did send them a letter in March responding to their problems. There are ongoing actions going on and studies being done by an Engineering firm to investigate the sanitary sewer conditions. Mr. Connolly is waiting for the proper weather to get in and clean up the drainage ditch. He asks for comments from the neighbors. Mary Gunning comments that they are looking to see if funds are available to repair their sewers. She comments that they did a complete study in 1987. They have a terrible problem now with the Regency Square Apartments and run-off water. Councilman Cavalcoli comments that when he did receive the phone call from them in January he contacted Mr. Kapsiak and Mr. Krautsack and Mr. Connolly and what they came up with was a short term and long term plan. Right now they are doing die tests to find out where there are leaks and there is funding available to work on the Wyndam area to alleviate the sanitary sewer issues. The immediate step to give relief for the storm water run-off is to clean out the creek. That along with the sewer work should significantly reduce the problems that they have. In the long term, they are looking to get support from the Corps of Engineers and DEC to change the flow of the creek in that area by purchasing some vacant property. Mary asks if they could bring in the sewer jet and clean out their sewers. Councilman Cavalcoli asks Mr. Lardo to give a timeline on the studies in that area. Mr. Lardo responds that the studies are supposed to be complete by September and he has not received a preliminary report yet. Councilman Cavalcoli asks if they went into that area to clean sewers, would it impact the study. Mr. Lardo comments, probably not unless they were working on it that day. Councilman Cavalcoli comments that he will contact Mr. Connolly for discussion on this. Dennis Newman comments that he was also experiencing flooding. Councilman Cavalcoli comments that he will set a meeting with the residents in that area and will send a letter in that regard.

Reports From Town Board Members and Department Heads

Councilwoman Kesner reports that Community Development just received an award for helping so many families find homes. She congratulates that Department and thanks them for their hard work.

Councilwoman Hochul comments, as the Library liaison, on a 2003 report that residents are using the Library more often and circulation has increased. She has a copy of the report if anyone is interested. She announces the Townwide Clean-up is on May 1st and they have many volunteers who have already signed up. It starts at 8:30 a.m. at Town Hall.

Supervisor Hoak comments on Congressman Quinn's retirement and congratulates him on his many years of service to our community.

Business From the Floor

Elaine Maloney reads a letter that she wrote concerning ongoing problems with a fence that they installed on their property which was knocked down by a snowplow. (Letter is on file in the Town Clerk's Office along with pictures) They have also filed a Notice of Claim for the damage to their fence.

Walter Kaleta questions if they have heard anything on the traffic light at Scranton Road and South Park Avenue. Supervisor Hoak comments that he hasn't had any problems turning left. A resident then stated that the weekends are bad.

Joe Kilian, Woodlawn Taxpayers, comments that Adelphia is taking down wires if you own a dish. Mr. Boehm, Deputy Town Attorney, comments that he needs a letter stating that.

Jim Connolly reports that the Highway Department will be working on the storm sewers in Woodlawn on the 4th and the 7th of May.

XXIX.

RESOLVED, that the Town Board adjourn to Executive Session at 9:15 p.m. on Personnel and Legal Matters.

Moved: Hoak Seconded: Cavalcoli

Roll Call: Ayes: Hoak, Cavalcoli, Hochul, Kesner

Noes: None

Carried

Correspondence – April 26, 2004

34 – To Supervisor Hoak from the Town Clerk's Office, the monthly report for March with receipts totaling \$53,885.98.

35 – To the Town Board from Pat Greinder, Hamburg Senior Golf Club, stating that Mary Nosky, who ran the snack shop at the golf course last year, was dependable and efficient. She worked closely with the Clubs in preparing special menus at reasonable prices. Asking that faithfulness and loyalty be considered in reviewing the bid selection for this year.

36 – To the Town Board from Rick Barkley, Grafton Ave., stating that Mary Nosky was virtually an unofficial officer of the Men's Club, at the golf course, she performed many extra duties above and beyond running the concession stand. He does not plan on spending any money this year at the concession stand.

37 – To the Town Board from Garry Nelson, Greenskeeper at the golf course, writing in support of Mary Nosky being retained as the operator of the concession stand at the golf course. In his twenty-five years there, the only way the snack bar has been successful is if the bidder is involved in the day to day operations. Please take this into consideration when making the decision.

38 – To the Town Board from Robert Fortin, President – Hamburg Men's Golf Club stating that he was extremely distressed to here that the concessionaire for the last ten years, Mary Nosky, may not be awarded the bid for renewal. He feels this will be a negative move from the point of the Men's Golf Club and other organized clubs. Asking that the contract be awarded to Mary.

39 – To Supervisor Hoak from Steven Dear, Jr, 99 Parkside Ave., stating that he wants to express his concern about the decision on the contract for the snack bar at the Hamburg Golf Course. Mary Nosky has had the lease for the last 10 years, and is a fixture there. Her service to the public increased attendance. She should be retained as the lessee for the concession stand.

40 – To Supervisor Hoak from Senator William Stachowski thanking him for the recent letter requesting his assistance in reference to the grant application for the Western New York Stormwater Pollution Prevention Project. He immediately contacted the NYSDEC to voice his support for this application and was advised that the award would be made shortly and the Town's application will be given every consideration.

41 – To Supervisor Hoak from Elizabeth O'Donnell, President of SABAH, thanking him for his donation. With donations such as his, they are able to provide the "handi-capable" skaters with the opportunities they need and deserve.

42 – To Supervisor Hoak and Chief Coggins from Mrs. Alice Monckton, 2819 Lakeview Rd., writing on behalf of her friend Margaret Howe wishing to extend thanks to Patrolman Kevin Trask for promptly answering a request to investigate a call for help. He checked her home to make sure she was alright but her phone did not work. He gave her his cell phone until her phone was repaired. They appreciate his concern and generosity.

43 – To D.A.R.E. Officers John and Scott from Denise Skowronski, Alternative Education Services, thanking them both for their presentations at the Education/Wellness Days at the Erie 1 BOCES Southtowns Academy. They received some very positive feedback from the students and staff.

44 – To Supervisor Hoak from Lee Daroshefski, Lake Shore Volunteer Fire Co., Inc., in regards to the lane changes on Route 5 that are about to take place. They are opposed to the planned lane changes and feel that this will cause more of a hazard due to the many side streets and driveways off of Route 5. It will cause more traffic accidents, slower times to destinations and heavy traffic volume. Hoping the Town will re-evaluate this situation.

45 – To the Town Board from Robert Lazur, president – New York Business Development Corporation, stating that Empire State Certified Development Corp. began a concerted effort to provide financing to businesses in Western New York. The loan portfolio now includes 43 loans for Erie County totaling \$11.6 million. NYBDC – Business New York's Web site can be found at www.nybdc.com.

46 – To Supervisor Hoak from Marian Vanni, Belmont Shelter Corp., stating that in September 2002 they opened a permanent office at 174 Main Street in the Village of Hamburg. An important goal is to help area residents take advantage of the valuable benefits available to them through their programs. Asking for a meeting to discuss how they can work with the Town to bring these benefits to a greater number of residents in our community.

47 – To Councilman Cavalcoti from residents of Thurston Avenue in Blasdell, letter #1 concerns water problems on their street and Letter #2 concerns sewer problems. Asking for help with these problems.

48 – To Peter Blaabauboer, Zoning Board Chairman from Lynn Kane, McKinley Pkwy., commenting that she finds the digital message board at the Pegasus Restaurant and the Buffalo Raceway to be extremely objectionable.

49 – To Catherine Rybczynski, Town Clerk, from Linda Mucyn, Manager of Hamburg Village Band, asking for financial support for the Village Band to hold concerts at Memorial Park this summer. Due to severe funding cuts they are seeking community support as well.

50 – To the Town Board from Raymond Janczyk, 4703 Bayview Road, asking for assistance from the Town in regards to snowmobiles and quads using Town owned property next to his house as a super highway for their vehicles.